

CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

5/26/17

Date

Honorable Dan Patrick
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on SB 302 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Kirk Watson

Van Taylor

Robert L. N. B.

[Signature]

Brian [Signature]

On the part of the Senate

Senfonia Thompson

[Signature]

Larry Gonzales

Ina MINJAREZ

Richard Peña Raymond

[Signature]

On the part of the House

John T. Smithee

Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

CONFERENCE COMMITTEE REPORT

3rd Printing

S.B. No. 302

A BILL TO BE ENTITLED

AN ACT

relating to the continuation and functions of the state bar.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 81.003, Government Code, is amended to read as follows:

Sec. 81.003. SUNSET PROVISION. The state bar is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, this chapter expires September 1, 2029 [2017].

SECTION 2. Section 81.0201, Government Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) The training program must provide the person with information regarding:

(1) the law governing [~~legislation that created the~~] state bar operations [~~and the board~~];

(2) the programs operated by the state bar;

(3) the role and functions of the state bar;

(4) the rules of the state bar, with an emphasis on the rules that relate to disciplinary and investigatory authority;

(4-a) the scope of and limitations on the rulemaking authority of the state bar;

(5) the current budget for the state bar;

(6) the results of the most recent formal audit of the

1 state bar;

2 (7) the requirements of:

3 (A) laws relating to ~~[the]~~ open meetings ~~[law]~~,
4 ~~[Chapter 551,~~

5 ~~[(B) the]~~ public information ~~[law]~~,
6 administrative procedure, and the disclosure of conflicts of
7 interest ~~[Chapter 552]; and~~

8 (B) ~~[(C)]~~ other laws applicable to members of a
9 state policymaking body in performing their duties ~~[relating to~~
10 ~~public officials, including conflict-of-interest laws]; and~~

11 (8) any applicable ethics policies adopted by the
12 state bar or the Texas Ethics Commission.

13 (c) The executive director shall create a training manual
14 that includes the information required by Subsection (b). The
15 executive director shall distribute a copy of the training manual
16 annually to each member of the board of directors. On receipt of
17 the training manual, each member of the board shall sign and submit
18 to the executive director a statement acknowledging receipt of the
19 training manual.

20 SECTION 3. Section 81.022, Government Code, is amended by
21 adding Subsections (a-2), (a-3), and (a-4) to read as follows:

22 (a-2) Any change in a membership fee or other fee for state
23 bar members must be:

24 (1) clearly described and included in the proposed
25 budget; and

26 (2) considered by the supreme court in the state bar
27 budget deliberations.

1 (a-3) Except as provided by Subsection (a-4), an increase in
2 a membership fee or other fee for state bar members may not take
3 effect until the supreme court:

4 (1) distributes the proposed fee change in ballot form
5 to each member of the state bar and orders a vote;

6 (2) counts the returned ballots following the 30th day
7 after the date the ballots are distributed; and

8 (3) promulgates the proposed fee, effective
9 immediately, only on approval of the fee increase by a majority of
10 the state bar members who voted on the increase.

11 (a-4) An increase in the fee for membership in the state bar
12 may be made by the board of directors, without a vote of the members
13 of the state bar, provided that not more than one increase may be
14 made by the board of directors in a six-year period and such
15 increase shall not exceed 10 percent.

16 SECTION 4. Sections 81.024(a) and (b), Government Code, are
17 amended to read as follows:

18 (a) The supreme court shall promulgate the rules governing
19 the state bar. ~~[The rules may be amended as provided by this~~
20 ~~section.]~~

21 (b) The supreme court may:

22 (1) [~~either~~] as it considers necessary, pursuant to
23 a resolution of the board of directors of the state bar, or pursuant
24 to a petition signed by at least 10 percent of the registered
25 members of the state bar, prepare, propose, and adopt rules or
26 amendments to rules for the operation, maintenance, and
27 administration [~~conduct~~] of the state bar; and

1 (2) in accordance with Subchapter E-1, adopt rules,
2 including the Texas Disciplinary Rules of Professional Conduct and
3 the Texas Rules of Disciplinary Procedure, for the discipline of
4 state bar [its] members.

5 SECTION 5. Section 81.054(a), Government Code, is amended
6 to read as follows:

7 (a) The supreme court shall set membership fees and other
8 fees for members of the state bar during the court's annual budget
9 process under Section 81.022. The fees, except as provided by
10 Subsection (j) and those set for associate members, must be set in
11 accordance with this section and Section 81.022 [~~81.024~~].

12 SECTION 6. Subchapter D, Chapter 81, Government Code, is
13 amended by adding Section 81.062 to read as follows:

14 Sec. 81.062. STATE BAR ADMISSION AND RELIGIOUS BELIEF. In
15 establishing the rules governing the admission to the practice of
16 law under Section 81.061, the supreme court shall ensure that no
17 rule violates Chapter 110, Civil Practice and Remedies Code.

18 SECTION 7. Section 81.072, Government Code, is amended by
19 adding Subsection (b-3) and amending Subsection (e) to read as
20 follows:

21 (b-3) In establishing minimum standards and procedures for
22 the attorney disciplinary and disability system under Subsection
23 (b), the supreme court must ensure that an attorney has an
24 opportunity to respond to all allegations of alleged misconduct.

25 (e) The state bar shall establish a voluntary mediation and
26 dispute resolution procedure to:

27 (1) attempt to resolve each minor grievance referred

1 to the voluntary mediation and dispute resolution procedure by the
2 chief disciplinary counsel ~~[allegation of attorney misconduct that~~
3 ~~is:~~

4 ~~[(A) classified as an inquiry under Section~~
5 ~~81.073(a)(2)(A) because it does not constitute an offense~~
6 ~~cognizable under the Texas Disciplinary Rules of Professional~~
7 ~~Conduct; or~~

8 ~~[(B) classified as a complaint and subsequently~~
9 ~~dismissed]; and~~

10 (2) facilitate coordination with other programs
11 administered by the state bar to address and attempt to resolve
12 inquiries and complaints referred to the voluntary mediation and
13 dispute resolution procedure.

14 SECTION 8. Section 81.076, Government Code, is amended by
15 amending Subsection (h) and adding Subsection (i) to read as
16 follows:

17 (h) The commission shall report to the board of directors,
18 the supreme court, and the legislature, at least annually,
19 concerning the state of the attorney discipline system and make
20 recommendations concerning the refinement and improvement of the
21 system. The commission's report must provide data by race and
22 gender and include:

23 (1) the number and final disposition of grievances
24 filed, dismissed, and investigated under and the disciplinary
25 decisions issued under the Texas Disciplinary Rules of Professional
26 Conduct relating to barratry, including the improper solicitation
27 of clients;

1 (2) the chief disciplinary counsel's cooperation with
2 local, state, or federal agencies in the investigation or
3 prosecution of civil actions or criminal offenses related to
4 barratry, including the number of grievances the chief disciplinary
5 counsel referred to or received from a law enforcement agency;

6 (3) barriers to the investigation and prosecution of
7 barratry-related criminal offenses or civil actions under existing
8 criminal and civil laws or to enforcement under the Texas
9 Disciplinary Rules of Professional Conduct; and

10 (4) recommendations for improving the attorney
11 discipline system, the Texas Disciplinary Rules of Professional
12 Conduct, or other state laws relating to barratry or improper
13 solicitation of clients.

14 (i) The commission shall prepare a summary of the
15 information included in the report under Subsection (h) and make
16 information available to the public regarding barratry-related
17 grievances, including the final disposition of the grievances, to
18 the extent allowable under, and consistent with, confidentiality
19 laws and rules.

20 SECTION 9. Subchapter E, Chapter 81, Government Code, is
21 amended by adding Sections 81.080, 81.081, 81.082, 81.083, 81.084,
22 81.085, and 81.086 to read as follows:

23 Sec. 81.080. ISSUANCE OF SUBPOENA; OBJECTION. (a) On
24 approval of the presiding officer of the appropriate district
25 grievance committee, the chief disciplinary counsel may, during an
26 investigation of a grievance, issue a subpoena that relates
27 directly to a specific allegation of attorney misconduct.

1 (b) The chief disciplinary counsel shall provide a process
2 for a respondent to object to a subpoena issued under this section.

3 Sec. 81.081. ATTORNEY SELF-REPORTING. The chief
4 disciplinary counsel shall develop guidelines and a procedure for
5 an attorney to self-report:

6 (1) any criminal offense committed by the attorney;
7 and

8 (2) any disciplinary action taken by another state's
9 bar against the attorney.

10 Sec. 81.082. PROCESS TO IDENTIFY COMPLAINTS SUITABLE FOR
11 SETTLEMENT OR INVESTIGATORY HEARING. (a) The chief disciplinary
12 counsel shall develop a process to identify a complaint that is
13 appropriate for a settlement attempt or an investigatory hearing
14 before a trial is requested or the complaint is placed on a hearing
15 docket.

16 (b) The chief disciplinary counsel may authorize a
17 settlement at any time during the disciplinary process.

18 Sec. 81.083. SANCTION GUIDELINES. (a) The chief
19 disciplinary counsel shall propose and the supreme court shall
20 adopt by rule sanction guidelines to:

21 (1) associate a specific rule violation or ethical
22 misconduct with a range of appropriate sanctions;

23 (2) provide aggravating and mitigating factors that
24 justify deviating from the established sanctions; and

25 (3) provide consistency between complaints heard by a
26 district grievance committee and complaints heard by a district
27 court.

1 (b) The chief disciplinary counsel shall ensure that
2 interested parties are provided an opportunity to comment on the
3 proposed sanction guidelines.

4 (c) The sanction guidelines adopted under this section do
5 not limit the authority of a district grievance committee or of a
6 district judge to make a finding or issue a decision.

7 Sec. 81.084. GRIEVANCE TRACKING SYSTEM. (a) The chief
8 disciplinary counsel shall create and maintain a grievance tracking
9 system for grievances filed and disciplinary decisions issued under
10 this subchapter.

11 (b) The grievance tracking system must:

12 (1) associate each rule violation or instance of
13 ethical misconduct with the sanction imposed or final action taken
14 for the violation or misconduct in a diversionary procedure adopted
15 under state bar rules;

16 (2) address whether a sanction decision aligns with
17 the sanction guidelines adopted under Section 81.083;

18 (3) specify the district grievance committee or
19 district judge that imposed the sanction to evaluate sanction
20 patterns within the disciplinary districts and facilitate training
21 for district grievance committee members; and

22 (4) include sufficient information to evaluate and
23 track disciplinary trends over time.

24 (c) The chief disciplinary counsel shall:

25 (1) periodically evaluate and report information
26 gathered in the grievance tracking system to the commission and
27 district grievance committee members; and

1 (2) post the information reported under Subdivision
2 (1) on the state bar's Internet website.

3 Sec. 81.085. REGULAR SEARCH OF NATIONAL LAWYER REGULATORY
4 DATA BANK. The chief disciplinary counsel shall establish a
5 process to regularly search the National Lawyer Regulatory Data
6 Bank maintained by the American Bar Association to identify a
7 member of the state bar who is disciplined in another state.

8 Sec. 81.086. TELECONFERENCE. The chief disciplinary
9 counsel may hold investigatory and disciplinary hearings by
10 teleconference.

11 SECTION 10. Chapter 81, Government Code, is amended by
12 adding Subchapters E-1 and E-2 to read as follows:

13 SUBCHAPTER E-1. COMMITTEE ON DISCIPLINARY RULES AND REFERENDA;

14 DISCIPLINARY RULE PROPOSAL PROCESS

15 Sec. 81.0871. DEFINITION. In this subchapter, "committee"
16 means the Committee on Disciplinary Rules and Referenda.

17 Sec. 81.0872. ESTABLISHMENT OF COMMITTEE. (a) The
18 committee consists of nine members, including:

19 (1) three attorneys appointed by the president of the
20 state bar;

21 (2) one nonattorney public member appointed by the
22 president of the state bar;

23 (3) four attorneys appointed by the supreme court; and

24 (4) one nonattorney public member appointed by the
25 supreme court.

26 (b) The president of the state bar and the chief justice of
27 the supreme court shall alternate designating an attorney member of

1 the committee to serve as the presiding officer of the committee for
2 a term of one year.

3 (c) Committee members serve staggered three-year terms,
4 with one-third of the members' terms expiring each year.

5 Sec. 81.0873. COMMITTEE DUTIES. The committee shall:

6 (1) regularly review the Texas Disciplinary Rules of
7 Professional Conduct and the Texas Rules of Disciplinary Procedure;

8 (2) at least annually issue to the supreme court and
9 the board of directors a report on the adequacy of the rules
10 reviewed under Subdivision (1); and

11 (3) oversee the initial process for proposing a
12 disciplinary rule under Section 81.0875.

13 Sec. 81.0874. STAFF ATTORNEY. The state bar may hire a
14 staff attorney to assist the committee.

15 Sec. 81.0875. INITIATION OF RULE PROPOSAL PROCESS.

16 (a) The committee may initiate the process for proposing a
17 disciplinary rule for the state bar as the committee considers
18 necessary or in conjunction with the review of the Texas
19 Disciplinary Rules of Professional Conduct and the Texas Rules of
20 Disciplinary Procedure under Section 81.0873(1).

21 (b) Not later than the 60th day after the date the committee
22 receives a request to initiate the process for proposing a
23 disciplinary rule, the committee shall:

24 (1) initiate the process; or

25 (2) issue a written decision declining to initiate the
26 process and the reasons for declining.

27 (c) A request to initiate the process for proposing a

1 disciplinary rule under Subsection (b) may be made by:

2 (1) a resolution of the board of directors;

3 (2) a request of the supreme court;

4 (3) a request of the commission;

5 (4) a petition signed by at least 10 percent of the
6 registered members of the state bar;

7 (5) a concurrent resolution of the legislature; or

8 (6) a petition signed by at least 20,000 people, of
9 which at least 51 percent, or 10,200 or more, must be residents of
10 this state.

11 Sec. 81.0876. RULE PROPOSAL. (a) On initiation of the
12 process for proposing a disciplinary rule, the committee shall:

13 (1) study the issue to be addressed by the proposed
14 rule;

15 (2) hold a public hearing on the issue;

16 (3) draft the proposed rule, which may not address
17 more than one subject; and

18 (4) make all reasonable efforts to solicit comments
19 from different geographic regions in this state, nonattorney
20 members of the public, and members of the state bar.

21 (b) A proposed disciplinary rule is withdrawn six months
22 after the date the rule proposal process is initiated under Section
23 81.0875(b)(1) if the proposed disciplinary rule is not published on
24 or before that date in:

25 (1) the Texas Register; and

26 (2) the Texas Bar Journal.

27 (c) The committee shall give interested parties at least 30

days from the date the proposed disciplinary rule is published as required under Subsection (b) to submit comments on the rule to the committee.

(d) The committee shall hold a public hearing on the proposed disciplinary rule if, during the comment period described by Subsection (c), the hearing is requested by:

(1) at least 25 people;

(2) a state agency or political subdivision of this state; or

(3) an association with at least 25 members.

(e) On conclusion of the comment period described by Subsection (c), the committee may amend the proposed disciplinary rule in response to the comments.

(f) The committee shall vote on whether to recommend a proposed disciplinary rule to the board of directors not later than the 60th day after the final day of the comment period described by Subsection (c). The committee may not recommend a proposed disciplinary rule unless at least five members of the committee favor recommendation.

(g) The committee shall submit a proposed disciplinary rule that is recommended by the committee to the board of directors for review and consideration.

Sec. 81.0877. APPROVAL OF PROPOSED DISCIPLINARY RULE BY BOARD OF DIRECTORS. (a) The board of directors shall vote on each proposed disciplinary rule recommended by the committee not later than the 120th day after the date the rule is received from the committee. The board shall vote for or against the rule or return

1 the rule to the committee for additional consideration.

2 (b) If a proposed disciplinary rule is approved by a
3 majority of the directors, the board of directors shall petition
4 the supreme court to order a referendum as provided by Section
5 81.0878 on the rule by the members of the state bar.

6 Sec. 81.0878. REFERENDUM VOTE BY STATE BAR MEMBERS.

7 (a) On receipt of a petition filed by the board of directors under
8 Section 81.0877(b), the supreme court shall:

9 (1) distribute a copy of the rule in ballot form to
10 each member of the state bar and order a vote on the rule; and

11 (2) publish the rule in:

12 (A) the Texas Register; and

13 (B) the Texas Bar Journal.

14 (b) The supreme court shall give state bar members:

15 (1) at least 30 days to consider a proposed
16 disciplinary rule before voting begins; and

17 (2) 30 days to vote on the proposed disciplinary rule
18 following the period for considering the proposed rule under
19 Subdivision (1).

20 (c) The state bar shall provide proponents and opponents of
21 a proposed disciplinary rule an equal opportunity to present their
22 views at any bar-sponsored forum at which the rule referendum is
23 discussed.

24 (d) One or more proposed disciplinary rules may appear on a
25 single referendum ballot. State bar members shall vote for or
26 against each rule. If a majority of the members who vote on the
27 proposed rule vote in favor of the rule, the rule is approved by the

1 members of the state bar.

2 Sec. 81.0879. SUPREME COURT APPROVAL OR REJECTION. The
3 supreme court by majority vote may approve or reject a proposed
4 disciplinary rule in its entirety, but may not approve or reject
5 only part of the rule. If the supreme court does not vote on the
6 rule on or before the 120th day after the date the rule is approved
7 by bar members under Section 81.0878, the rule is considered
8 approved by the supreme court.

9 Sec. 81.08791. RULE DELIBERATIONS. (a) The committee, the
10 board of directors, or the supreme court shall provide notice of any
11 deliberation on a proposed disciplinary rule, and the deliberation
12 must be open to the public.

13 (b) The board of directors and the supreme court shall
14 record and make public each vote for or against a proposed
15 disciplinary rule.

16 Sec. 81.08792. PROPOSED DISCIPLINARY RULE APPROVAL
17 REQUIRED BEFORE ADOPTION. A proposed disciplinary rule may not be
18 adopted by the supreme court unless the rule is approved by:

- 19 (1) the committee;
20 (2) the board of directors;
21 (3) the members of the state bar; and
22 (4) the supreme court.

23 Sec. 81.08793. USE OF TECHNOLOGY. The supreme court, the
24 committee, and the state bar shall use technological solutions
25 throughout the disciplinary rule proposal process to promote:

- 26 (1) financial efficiency; and
27 (2) comments from interested persons.

Sec. 81.08794. EXPIRED TIME AND DEFEATED RULE PROPOSAL.

(a) If a time limit provided by this subchapter expires or a disciplinary rule proposal is otherwise defeated, the process for initiating the proposed disciplinary rule may again be initiated in accordance with this subchapter.

(b) For good cause shown, the supreme court may grant a petition to extend any time limit provided by this subchapter until a date that is not later than the 90th day after the original deadline.

SUBCHAPTER E-2. OMBUDSMAN FOR ATTORNEY DISCIPLINE SYSTEM

Sec. 81.0881. DEFINITIONS. In this subchapter:

(1) "Ombudsman" means the ombudsman for the attorney discipline system of the state bar.

(2) "System" means the attorney discipline system of the state bar.

Sec. 81.0882. OMBUDSMAN FOR ATTORNEY DISCIPLINE SYSTEM.

(a) The state bar shall fund one full-time equivalent position of ombudsman for the attorney discipline system.

(b) The ombudsman is selected by the members of the supreme court and is independent of the state bar, the board of directors, the commission, and the chief disciplinary counsel.

(c) The ombudsman shall report directly to the supreme court.

Sec. 81.0883. POWERS AND DUTIES OF OMBUDSMAN. (a) The ombudsman shall:

(1) review grievances to determine whether the state bar followed the proper grievance procedures;

1 (2) receive complaints about the system;
2 (3) receive and investigate complaints on violations
3 of the system's procedural rules;
4 (4) answer questions from the public on the system's
5 operation, accessing the system, and the availability of other
6 state bar programs;
7 (5) assist members of the public wishing to submit a
8 lawyer grievance by explaining the information required and the
9 methods for submitting the information; and
10 (6) at least annually, make recommendations to the
11 board of directors and the supreme court for improvements to the
12 system, including ways to improve access to the system and changes
13 to the grievance form.

14 (b) The ombudsman may not:

15 (1) draft a complaint for a member of the public;
16 (2) act as an advocate for a member of the public;
17 (3) reverse or modify a finding or judgment in any
18 disciplinary proceeding; or
19 (4) intervene in any disciplinary matter.

20 Sec. 81.0884. ACCESS TO INFORMATION. The chief
21 disciplinary counsel, a district grievance committee, the board of
22 directors, the commission, and state bar members shall share with
23 the ombudsman requested information that is necessary to:

24 (1) determine whether the state bar followed
25 procedural rules related to a particular grievance; or
26 (2) evaluate the system's efficacy and adequacy.

27 Sec. 81.0885. CONFIDENTIAL INFORMATION; PRIVILEGED

1 COMMUNICATIONS. (a) All types of information, proceedings,
2 hearing transcripts, and statements presented to the ombudsman are
3 confidential and may not be disclosed to any person other than the
4 chief disciplinary counsel unless disclosure is ordered by a court.

5 (b) The ombudsman may not access privileged communications
6 and information shared between the chief disciplinary counsel and
7 the commission.

8 SECTION 11. Section 81.115(b), Government Code, is amended
9 to read as follows:

10 (b) A profile must contain the following information on each
11 attorney:

12 (1) the name of each law school attended and the date
13 the attorney graduated;

14 (2) the date the attorney became licensed to practice
15 law in this state;

16 (3) any specialty certification recognized by the
17 state bar and held by the attorney;

18 (4) the attorney's primary practice location;

19 (5) any public disciplinary sanctions issued by the
20 state bar against the attorney, including a link on the attorney's
21 online profile to the full text of the disciplinary judgment
22 entered by a district grievance committee or district judge ~~during~~
23 ~~at least the 10-year period preceding the date of the profile~~; and

24 (6) any public disciplinary sanctions issued by an
25 entity in another state responsible for attorney discipline in that
26 state against the attorney ~~[during at least the 10-year period~~
27 ~~preceding the date of the profile]~~.

SECTION 12. Section 411.100, Government Code, is amended to read as follows:

Sec. 411.100. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: BOARD OF LAW EXAMINERS AND STATE BAR OF TEXAS.

(a) The Board of Law Examiners is entitled to obtain from the department criminal history record information maintained by the department that relates to a person who is an applicant to take a bar examination.

(a-1) The State Bar of Texas is entitled to obtain:

(1) from the department, criminal history record information maintained by the department that relates to a person who is a member of the state bar; or

(2) from the Board of Law Examiners, criminal history record information obtained under Subsection (a).

(b) Criminal history record information obtained ~~[by the board]~~ under Subsection (a) or (a-1) may not be released or disclosed to any person, except on court order or with consent of the applicant.

(c) Immediately following the ~~[board's]~~ decision of the Board of Law Examiners on recommending an applicant, the board shall collect and make accessible to the State Bar of Texas ~~[seal]~~ all criminal history record information obtained by the board that relates to that applicant.

SECTION 13. Section 411.1005(a), Government Code, is amended to read as follows:

(a) The chief disciplinary ~~[general]~~ counsel of the State Bar of Texas is entitled to obtain from the department criminal

1 history record information maintained by the department that
2 relates to a person who is:

3 (1) ~~[a person]~~ licensed by the state bar;

4 (2) ~~[and who is]~~ the subject of or involved in an
5 investigation of:

6 (A) professional misconduct relating to a
7 grievance filed under the disciplinary rules of the state bar; or

8 (B) barratry, the unauthorized practice of law,
9 or falsely holding oneself out as a lawyer, in violation of Section
10 38.12, 38.122, or 38.123, Penal Code;

11 (3) ~~[(2)]~~ a witness in any disciplinary action or
12 proceeding conducted by the state bar, the Board of Disciplinary
13 Appeals, or any court; or

14 (4) ~~[(3)]~~ an applicant for reinstatement to practice
15 law.

16 SECTION 14. Sections 81.024(c), (d), (e), (f), and (g),
17 Government Code, are repealed.

18 SECTION 15. (a) The State Bar of Texas shall obtain
19 criminal history record information on each person who is a member
20 of the state bar and whose information is already on file with the
21 Department of Public Safety or the Board of Law Examiners on the
22 effective date of this Act as authorized by Sections 411.100 and
23 411.1005, Government Code, as amended by this Act, not later than
24 September 1, 2018.

25 (b) As soon as practicable after the effective date of this
26 Act, but not later than January 1, 2018, the president of the State
27 Bar of Texas and the Texas Supreme Court shall appoint the initial

1 members of the Committee on Disciplinary Rules and Referenda as
2 follows:

3 (1) the state bar president shall appoint one person
4 to a term expiring in 2018;

5 (2) the supreme court shall appoint two people to
6 terms expiring in 2018;

7 (3) the state bar president shall appoint two people
8 to terms expiring in 2019;

9 (4) the supreme court shall appoint one person to a
10 term expiring in 2019;

11 (5) the state bar president shall appoint one person
12 to a term expiring in 2020; and

13 (6) the supreme court shall appoint two people to
14 terms expiring in 2020.

15 (c) Notwithstanding Subchapter E-1, Chapter 81, Government
16 Code, as added by this Act, not later than March 1, 2018, the Texas
17 Supreme Court shall adopt the rules necessary to:

18 (1) modify the voluntary mediation and dispute
19 resolution procedures for grievances as required by Section
20 81.072(e), Government Code, as amended by this Act;

21 (2) authorize the issuance of subpoenas under Section
22 81.080, Government Code, as added by this Act;

23 (3) implement Section 81.081, Government Code, as
24 added by this Act;

25 (4) revise the time provided for grievance
26 investigations, subpoena issuance, investigatory hearings, and
27 providing voluntary mediation and dispute resolution under Section

1 81.072(e), Government Code, as amended by this Act;

2 (5) establish the process to identify complaints
3 suitable for settlement attempts and authorize the chief
4 disciplinary counsel to conduct investigatory and disciplinary
5 hearings by teleconference under Sections 81.082 and 81.086,
6 Government Code, as added by this Act;

7 (6) establish the grievance referral program as
8 required by Subsection (d)(3) of this section; and

9 (7) establish the sanction guidelines proposed by the
10 chief disciplinary counsel under Section 81.083, Government Code,
11 as added by this Act.

12 (d) The chief disciplinary counsel shall:

13 (1) develop proposed changes to the disciplinary rules
14 regarding the time for conducting an investigation of a grievance
15 or issuing a subpoena related to an investigation or attempting a
16 settlement in an investigatory hearing under Section 81.082,
17 Government Code, as added by this Act;

18 (2) propose rules necessary to implement the
19 settlement process described by Section 81.082, Government Code, as
20 added by this Act; and

21 (3) propose rules to establish a grievance referral
22 program under the Texas Rules of Disciplinary Procedure, including
23 criteria for attorney participation and authorization for use of
24 the program at any point in the attorney disciplinary process.

25 (e) The State Bar of Texas shall assist the Texas Supreme
26 Court on rule modifications to the Texas Rules of Disciplinary
27 Procedure that are necessary to address Section 81.072(e)(1),

1 Government Code, as amended by this Act, including:

2 (1) types of grievances the chief disciplinary counsel
3 may refer to the voluntary mediation and dispute resolution
4 procedure and the criteria defining the grievance types;

5 (2) modifications to the time for processing
6 grievances to accommodate voluntary mediation and dispute
7 resolution and the establishment of a limit on the time for
8 resolution through voluntary mediation and dispute resolution or
9 referral to the formal grievance process for further action; and

10 (3) confidentiality rules to allow the chief
11 disciplinary counsel and client-attorney assistance program to
12 share appropriate information in a case referred for voluntary
13 mediation and dispute resolution.

14 (f) The State Bar of Texas shall include on attorneys'
15 online profiles any historical information on public disciplinary
16 sanctions as is practicable under Section 81.115(b), Government
17 Code, as amended by this Act. A public disciplinary action issued
18 on or after the effective date of this Act must be included on the
19 attorney's online profile as required by Section 81.115(b),
20 Government Code, as amended by this Act.

21 (g) Not later than September 1, 2018, the Commission for
22 Lawyer Discipline shall include information regarding barratry in
23 the report required under Section 81.076(h), Government Code, as
24 amended by this Act.

25 SECTION 16. (a) Except as provided by Subsection (b) of
26 this section, Section 81.0201, Government Code, as amended by this
27 Act, applies to a member of the board of directors of the State Bar

1 of Texas appointed before, on, or after the effective date of this
2 Act.

3 (b) A member of the board of directors of the State Bar of
4 Texas who, before the effective date of this Act, completed the
5 training program required by Section 81.0201, Government Code, as
6 that law existed before the effective date of this Act, is required
7 to complete additional training only on subjects added by this Act
8 to the training program as required by Section 81.0201, Government
9 Code, as amended by this Act. A board member described by this
10 subsection may not vote, deliberate, or be counted as a member in
11 attendance at a meeting of the board held on or after December 1,
12 2017, until the member completes the additional training.

13 SECTION 17. This Act takes effect September 1, 2017.

Senate Bill 302
Conference Committee Report
Section-by-Section Analysis

SENATE VERSION	HOUSE VERSION (IE)	CONFERENCE
SECTION 1. Section 81.003, Government Code, is amended.	SECTION 1. Same as Senate version.	SECTION 1. Same as Senate version.
SECTION 2. Section 81.0201, Government Code, is amended.	SECTION 2. Same as Senate version.	SECTION 2. Same as Senate version.
SECTION 3. Amends Section 81.022, Government Code. Among other provisions, adds Subsection (a-4) to read as follows: (a-4) <u>The board of directors may increase a membership fee or other fee for state bar members, without distributing the proposed fee to the state bar members for a vote, on or after the sixth anniversary of the preceding fee increase</u> provided the fee increase amount is not more than 10 percent <i>of the previous fee amount.</i>	SECTION 3. Same as Senate version except adds Subsection (a-4) to read as follows: (a-4) <u>An increase in the fee for membership in the state bar may be made by the board of directors, without a vote of the members of the state bar, provided that not more than one increase may be made by the board of directors in a six-year period</u> and such increase shall not exceed 10 percent. [FA1(1)]	SECTION 3. Same as House version.
SECTION 4. Sections 81.024(a) and (b), Government Code, are amended.	SECTION 4. Same as Senate version.	SECTION 4. Same as Senate version.
SECTION 5. Subchapter B, Chapter 81, Government Code, is amended by adding Section 81.037, CRIMINAL HISTORY RECORD INFORMATION.	<i>No equivalent provision.</i> [Deleted by FA2(1)]	Same as House version.
SECTION 6. Section 81.054(a), Government Code, is amended to read as follows: (a) The supreme court shall set membership fees and other fees for members of the state bar <u>during the court's annual budget process under Section 81.022.</u> The fees, except as provided by Subsection (j) and those set for associate members, must be set in accordance with this section <i>[and Section 81.024].</i>	SECTION 6. Section 81.054(a), Government Code, is amended to read as follows: (a) The supreme court shall set membership fees and other fees for members of the state bar <u>during the court's annual budget process under Section 81.022.</u> The fees, except as provided by Subsection (j) and those set for associate members, must be set in accordance with this section <i>and Section 81.022 [81.024].</i> [FA1(2)]	SECTION 5. Same as House version.

Senate Bill 302
Conference Committee Report
Section-by-Section Analysis

SENATE VERSION	HOUSE VERSION (IE)	CONFERENCE
<i>No equivalent provision.</i>	<p>SECTION __. Subchapter D, Chapter 81, Government Code, is amended by adding Section 81.062 to read as follows: [FA6]</p> <p><u>Sec. 81.062. STATE BAR ADMISSION AND RELIGIOUS BELIEF. In establishing the rules governing the admission to the practice of law under Section 81.061, the supreme court shall ensure that no rule <i>limits, hinders, disadvantages, or otherwise adversely affects a person's admission to the practice of law, or a person's continued practice of law, on the basis of a person's sincerely held religious belief.</i></u> [FA6,FA8]</p>	<p>SECTION 6. Subchapter D, Chapter 81, Government Code, is amended by adding Section 81.062 to read as follows:</p> <p><u>Sec. 81.062. STATE BAR ADMISSION AND RELIGIOUS BELIEF. In establishing the rules governing the admission to the practice of law under Section 81.061, the supreme court shall ensure that no rule <i>violates Chapter 110, Civil Practice and Remedies Code.</i></u></p>
<p>SECTION 7. Section 81.072(e), Government Code, is amended.</p>	<p>SECTION 7. Same as Senate version except also adds Subsection (b-3) as follows: <u>(b-3) In establishing minimum standards and procedures for the attorney disciplinary and disability system under Subsection (b), the supreme court must ensure that:</u> <u>(1) an attorney has an opportunity to respond to all allegations of <i>a complaint, including an allegation outside the bounds of a complaint; and</i></u> <u>(2) <i>a formal complaint is limited to the allegation from the original grievance.</i></u> [FA4,FA5(1)]</p>	<p>SECTION 7. Same as House version except as follows:</p> <p><u>(b-3) In establishing minimum standards and procedures for the attorney disciplinary and disability system under Subsection (b), the supreme court must ensure that an attorney has an opportunity to respond to all allegations of <i>alleged misconduct.</i></u></p>
<i>No equivalent provision.</i>	<p>SECTION __. Section 81.076, Government Code, is amended by amending Subsection (h) and adding Subsection (i) to read as follows: [FA10]</p> <p>(h) The commission shall report to the board of directors, the supreme court, and the legislature, at least annually, concerning the state of the attorney discipline system and make recommendations concerning the refinement and improvement of the system. <u>The commission's report must provide data by race and gender and include:</u> [FA10,FA11]</p>	<p>SECTION 8. Same as House version.</p>

Senate Bill 302
Conference Committee Report
Section-by-Section Analysis

SENATE VERSION

HOUSE VERSION (IE)

CONFERENCE

(1) the number and final disposition of grievances filed, dismissed, and investigated under and the disciplinary decisions issued under the Texas Disciplinary Rules of Professional Conduct relating to barratry, including the improper solicitation of clients;
(2) the chief disciplinary counsel's cooperation with local, state, or federal agencies in the investigation or prosecution of civil actions or criminal offenses related to barratry, including the number of grievances the chief disciplinary counsel referred to or received from a law enforcement agency;
(3) barriers to the investigation and prosecution of barratry-related criminal offenses or civil actions under existing criminal and civil laws or to enforcement under the Texas Disciplinary Rules of Professional Conduct; and
(4) recommendations for improving the attorney discipline system, the Texas Disciplinary Rules of Professional Conduct, or other state laws relating to barratry or improper solicitation of clients.
(i) The commission shall prepare a summary of the information included in the report under Subsection (h) and make information available to the public regarding barratry-related grievances, including the final disposition of the grievances, to the extent allowable under, and consistent with, confidentiality laws and rules. [FA10]

SECTION 8. Subchapter E, Chapter 81, Government Code, is amended.

SECTION 8. Same as Senate version except also adds Subsection (a-1) as follows:
(a-1) Subpoenas under this section may only be issued to attorneys, persons who are employed by attorneys, and agents of attorneys for matters related directly to a specific allegation of attorney misconduct. [FA4,FA5(2)]

SECTION 9. Same as Senate version.

Senate Bill 302
Conference Committee Report
Section-by-Section Analysis

SENATE VERSION

SECTION 9. Chapter 81, Government Code, is amended by adding Subchapters E-1, COMMITTEE ON DISCIPLINARY RULES AND REFERENDA; DISCIPLINARY RULE PROPOSAL PROCESS, and E-2, OMBUDSMAN FOR ATTORNEY DISCIPLINE SYSTEM.

SECTION 10. Section 81.115(b), Government Code, is amended.

SECTION 11. Section 411.100, Government Code, is amended.

SECTION 12. Section 411.1005(a), Government Code, is amended.

SECTION 13. The following provisions of the Government Code are repealed:

(1) Sections 81.024(c), (d), (e), (f), and (g); *and*
 (2) *Section 411.1005(c).*

SECTION 14.

(a) The State Bar of Texas shall obtain criminal history record information on each person who is a member of the state bar on the effective date of this Act as authorized by ***Section 81.037***, Government Code, as ***added*** by this Act, not later than ***September 1, 2019***.

(b)-(f)

HOUSE VERSION (IE)

SECTION 9. Same as Senate version.

SECTION 10. Same as Senate version.

SECTION 11. Same as Senate version.

No equivalent provision. [Deleted by FA2(2),FA3]

SECTION __. Sections 81.024(c), (d), (e), (f), and (g), Government Code, are repealed. [FA2(3)]

SECTION 14. Same as Senate version except as follows:

No equivalent provision. [Deleted by FA2(4)]

(b)-(f) Same as Senate version.

CONFERENCE

SECTION 10. Same as Senate version.

SECTION 11. Same as Senate version.

SECTION 12. Same as Senate version.

SECTION 13. Same as Senate version.

SECTION 14. Same as House version.

SECTION 15. Same as Senate version except as follows:

(a) The State Bar of Texas shall obtain criminal history record information on each person who is a member of the state bar *and whose information is already on file with the Department of Public Safety or the Board of Law Examiners* on the effective date of this Act as authorized by *Sections 411.100 and 411.1005*, Government Code, as *amended* by this Act, not later than *September 1, 2018*.

(b)-(f) Substantially the same as Senate version.

Senate Bill 302
Conference Committee Report
Section-by-Section Analysis

SENATE VERSION	HOUSE VERSION (IE)	CONFERENCE
<i>No equivalent provision.</i>	SECTION __. Not later than September 1, 2018, the Commission for Lawyer Discipline shall include information regarding barratry in the report required under Section 81.076(h), Government Code, as amended by this Act. [FA10]	(g) Same as House version.
SECTION 15. Transition provision.	SECTION 15. Same as Senate version.	SECTION 16. Same as Senate version.
SECTION 16. Effective date.	SECTION 16. Same as Senate version.	SECTION 17. Same as Senate version.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

May 27, 2017

TO: Honorable Dan Patrick, Lieutenant Governor, Senate
Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: SB302 by Watson (Relating to the continuation and functions of the state bar.),
Conference Committee Report

No significant fiscal implication to the State is anticipated.

The bill would amend the Government Code to extend the State Bar's sunset expiration date to September 1, 2029, expand training requirements for certain board members, revise grievance and disciplinary proceedings, require the Supreme Court to appoint an ombudsman to review and oversee the grievance system, and define the composition and operations of the Committee on Disciplinary Rules and Referenda. The bill requires the State Bar to obtain criminal history record information on each state bar member whose information is already on file with the Department of Public Safety or the Board of Law Examiners.

According to the Sunset Commission, the Department of Public Safety, the Office of Court Administration, and the Comptroller of Public Accounts, provisions of the bill could be accomplished through existing resources.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 116 Sunset Advisory Commission, 212 Office of Court Administration,
Texas Judicial Council, 304 Comptroller of Public Accounts, 405
Department of Public Safety

LBB Staff: UP, LBO, GDz, AG, MW, SD, FR

Certification of Compliance with

Rule 13, Section 6(b), House Rules of Procedure

Rule 13, Section 6(b), House Rules of Procedure, requires a copy of a conference committee report signed by a majority of each committee of the conference to be furnished to each member of the committee in person or, if unable to deliver in person, by placing a copy in the member's newspaper mailbox at least one hour before the report is furnished to each member of the house under Rule 13, Section 10(a). The paper copies of the report submitted to the chief clerk under Rule 13, Section 10(b), must contain a certificate that the requirement of Rule 13, Section 6(b), has been satisfied, and that certificate must be attached to the copy of the report furnished to each member under Rule 13, Section 10(d). Failure to comply with this requirement is not a sustainable point of order under Rule 13.

I certify that a copy of the conference committee report on SB 302 was furnished to each member of the conference committee in compliance with Rule 13, Section 6(b), House Rules of Procedure, before submission of the paper copies of the report to the chief clerk under Rule 13, Section 10(b), House Rules of Procedure.

Deafonia Thompson
(name)

May 26, 2017
(date)